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June 20, 1994

HAND DELIVERED

Mr. William F. Caton
Acting Secretary
Federal Communications commission
Mass Media Services
1919 M Street, NW
Washington, D.C. 20554

Re: GN Docket No. 93-252
Comments of Roseville Telephone Company

Dear Mr. Caton:

Transmitted herewith on behalf of Roseville Telephone Company are an original and four copies of its Comments in GN Docket No. 93-252 in response to the Commission's *Further notice of Proposed Rulemaking*, FCC 94-100, released May 20, 1994.

Very truly yours,

Paul J. Feldman
Counsel for
Roseville Telephone Company

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Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services	GN Docket No. 93-252

COMMENTS OF ROSEVILLE TELEPHONE COMPANY

Roseville Telephone Company ("Roseville") hereby submits its comments in response to the Commission's *Further Notice of Proposed Rulemaking,* FCC 94-100, released on May 20, 1994 in the above captioned proceeding (hereinafter, the "Further Notice"). In these comments, Roseville suggests that there is no need, at this time, to create an limit on the amount of Commercial Mobile Radio Service ("CMRS") spectrum that a provider may hold in a particular geographic area. However, if the Commission creates such a limit, it should ensure that the attribution standard for the spectrum aggregation cap is consistent with the attribution standard established by the Commission in its Personal Communications Service ("PCS") proceeding for cellular operators.

I. Introduction

Roseville is a local exchange carrier that serves approximately 92,000 subscriber access lines in the Roseville, California area. Roseville has been providing high quality wire line services for 80 years, and it is the 25th largest LEC in the nation. Roseville also has a non-controlling limited partnership interest in Sacramento Valley Limited Partnership ("SVLP"), a cellular telephone entity which provides cellular telephone service in the Roseville service area, as well as other MSA's and RSA's in California and Nevada. Roseville's minority non-controlling interest in SVLP was obtained pursuant to one of the numerous settlement agreements encouraged by the FCC in the initial phase of the cellular telephone licensing proceedings.

Roseville believes that "wireless" will play an increasingly important role in future telecommunications. Advanced wireless services, such as PCS, will be needed to satisfy growing consumer demand for communications technologies that fit into the increasingly mobile and fast paced lifestyles, and such services may soon become integral parts of "basic" telephone service. Accordingly, Roseville is vitally interested in becoming a provider of PCS.

However, Roseville is concerned that the proposals for an attribution standard for the contemplated CMRS spectrum aggregation cap appears to be even more restrictive than the 20 percent cellular attribution standard established by the Commission in the broadband PCS proceeding, and that, if adopted,

it would further restrict the ability of Roseville, and numerous other similarly situated companies, from providing PCS to the public in their cellular service area.

II. There is No Need to Create a CMRS Spectrum Aggregation Cap at This Time.

In its Further Notice, the Commission proposes that spectrum held by a particular licensee in any commercial mobile radio service be aggregated together for the purposes of a cap which would limit licensees to a total of 40 MHz of CMRS spectrum in a particular geographic area. This proposal is based on the concern that licensees with the ability to obtain large amounts of CMRS spectrum in a given area could acquire excessive market power by potentially reducing the numbers of competing providers, not only within specific service categories, but also in CMRS generally. Further Notice at para. 89. However, Roseville believes that there is no demonstrable need for a CMRS spectrum aggregation cap at this time, and accordingly urges the Commission to forebear from creating such a cap.

First, there is no evidence that any CMRS operator has acquired spectrum, or will acquire spectrum, for use in the anti-competitive purposes noted by the Commission. For example, there is no evidence that non-wireline cellular carriers have obtained substantial SMR or paging spectrum for any anti-competitive purposes. Second, Roseville is concerned that it is difficult, if not impossible, to fairly predict how spectrum in the varying CMRS services will be used in the coming years. Accordingly,

even if a CMRS spectrum aggregation cap were appropriate, it is shear speculation at this time to set the precise amount of spectrum to be capped. Accordingly, the Commission should forebear, at this time, from enacting a CMRS spectrum aggregation cap.[1]

III. The Attribution Standard Used for a CMRS Spectrum Aggregation Cap Must be Consistent with the Cellular Attribution Standard for PCS.

As noted above, Roseville believes that there is no need at this time for a CMRS spectrum aggregation cap. However, if such a cap is created, the attribution standard used for that cap should be consistent with the cellular attribution standard for PCS.

In its Second Report and Order in the broadband PCS proceeding, the Commission recognized that permitting cellular licensees (and entities with an attributable interest in cellular licensees) to participate in PCS could foster rapid development of PCS because of their expertise, economies resulting from the use of existing infrastructures, and other reasons.[2] Yet, because of concerns related to potential anti-competitive conduct by cellular operators, the Commission restricted eligibility of cellular licensees to one ten MHZ PCS license within their cellular service area. For that purpose, the Commission

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[1] However, if the Commission is to establish a spectrum aggregation cap, it should establish specific standards under which CMRS providers could seek a waiver of that spectrum aggregation cap.

[2] Personal Communication Services, Second Report and Order, 8 FCC Rcd. 7700, at para. 106.

established as an "attributable interest", 20 percent or greater ownership interest in the relevant cellular licensee.[3] On reconsideration, the Commission, in its Memorandum Opinion and Order, FCC 94-144, released June 13, 1994 ("MO&O"), adhered to that attribution standard.[4]

However, in the Further Notice in the present proceeding, the Commission has proposed a CMRS attribution standard which appears to be inconsistent with the cellular/PCS attribution standard established in the broadband PCS proceeding. Thus, in paragraph 101 of the Further Notice, the Commission proposes that all CMRS ownership interests of five percent or more be attributed for the purpose of determining a spectrum aggregation cap. While the Commission states that the proposed five percent attribution standard is consistent with its PCS/cellular attribution standards, it is difficult to see how this is so. Further Notice at note 174. For example, under the attribution standard established in the PCS proceeding, if Entity A owns a five percent non-controlling interest in a cellular licensee,

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[3] Id., at paras. 107-108.

[4] It also should be noted that the Commission did revise its cellular attribution standard in connection with holdings of, and holdings in, certain "designated entities." Specifically, the Commission permitted designated entities to hold a non-controlling interest of up to 40 percent in a cellular licensee without being subject to the cellular/PCS eligibility restrictions. MO&O at para. 125. In addition, in order to encourage investment in cellular licenses held by designated entities, the Commission increased the cellular attribution standard from 20 percent to 40 percent for any cellular entity proposing to invest in businesses controlled by members of minority groups and/or women. MO&O at para. 127.

Entity A is entitled to bid on, and acquire, up to 40 MHZ of PCS spectrum within the same service area.[5] However, under the tentative proposal in the Further Notice, this five percent equity holding would create an attributable interest in the cellular (that is, CMRS) licensee, the cellular licensee's 25 MHZ of spectrum would be attributed to Entity A, and Entity A could bid on and acquire no more than 15 MHZ of PCS spectrum.[6] Thus, the proposal in the Further Notice, if adopted, would impose greater restrictions for PCS eligibility on entities with interests in cellular operations than the restrictions imposed in the PCS proceeding.

A conflict between the CMRS and PCS attribution standards is not justified and would create severe administrative problems for both PCS applicants and the Commission. Thus, Roseville urges the Commission to ensure that the CMRS attribution standard, at least as it is to be applied to applicants with interests in cellular licensees, is consistent with the cellular attribution standard adopted in the PCS proceeding.

Adoption of the much more restrictive attribution standard apparently contemplated in this proceeding would make it even more difficult for Roseville, and other similarly situated companies, to participate in PCS. Active participation by such

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[5] Second Report and Order at para. 107.

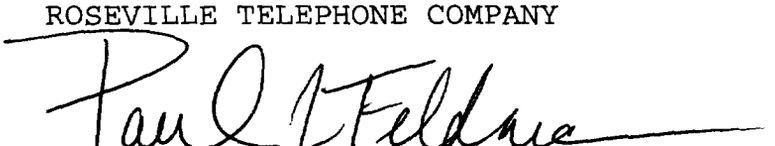
[6] Furthermore, in light of the fact that spectrum will initially only be auctioned in 30 MHZ and 10 MHZ blocks, in effect, Entity A could only bid on and acquire 10 MHZ of PCS spectrum.

industries as local exchange carrier in PCS is vital if the Commission is to promote rapid deployment of PCS by taking advantage of their expertise and existing infrastructures.

Accordingly, if the Commission enacts an attribution standard in its CMRS proceeding, that standard should be the same as the cellular attribution standard enacted in the broadband PCS proceeding. Specifically, where an entity has a non-controlling interest of less than 20 percent in a cellular licensee, that interest should be non-attributable for the purposes of a CMRS spectrum aggregation cap. Furthermore, pursuant to the MO&O at paras. 125-127, designated entities should be allowed to hold a non-controlling interest of up to 40 percent in a cellular licensee, and cellular licensees should be allowed to hold up to 40 percent of a PCS licensee controlled by members of minority groups and/or women.

Respectfully submitted,

ROSEVILLE TELEPHONE COMPANY



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June 20, 1994